

December 27, 2004

**OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON**

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REPORT AND DECISION

SUBJECT: Department of Development and Environmental Services File No. **E0001902**

EVERETTE BATES
Code Enforcement Appeal

Location: 30355 Kent-Black Diamond Road Southeast

Appellant: **Everette Bates**
30355 Kent-Black Diamond Road Southeast
Kent, WA 98042
Telephone: (253) 638-0353

King County: Department of Development and Environmental Services,
represented by **Jim Toole**
900 Oakesdale Avenue Southwest
Renton, Washington 98055-1219
Telephone: (206) 296-7196
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SUMMARY OF DECISION/RECOMMENDATION:

Department's Preliminary Recommendation:	Deny appeal
Department's Final Recommendation:	Deny appeal
Examiner's Decision:	Grant in part, deny in part

EXAMINER PROCEEDINGS:

Hearing Opened:	December 7, 2004
Hearing Closed:	December 15, 2004

Participants at the public hearing and the exhibits offered and entered are listed in the attached minutes.
A verbatim recording of the hearing is available in the office of the King County Hearing Examiner.

FINDINGS, CONCLUSIONS & DECISION: Having reviewed the record in this matter, the Examiner now makes and enters the following:

FINDINGS:

1. On October 12, 2004, the King County Department of Development and Environmental Services, Code Enforcement Section, issued a notice and order to Everette Bates for property located at 30355 Kent-Black Diamond Road Southeast. The property was cited for the operation of an auto repair business in excess of home occupation standards; construction of an outbuilding without a required building permit; the accumulation of inoperable vehicles and vehicle parts; parking of vehicles on non-impervious surfaces; and the accumulation of rubbish, junk and debris. Mr. Bates has filed a timely appeal of the notice and order.
2. At the hearing held on December 7, 2004, Mr. Bates objected to the entry of the staff photographs of the site identified in the record as exhibit 12. All but one of these photographs were taken on June 22, 2004, by officer Jim Toole. Mr. Toole accompanied a Bonneville Power Administration employee in driving through the Bates property to access a BPA power easement which encumbers the western one-third of the Bates parcel. Mr. Toole stated that all the photographs were taken either from the BPA vehicle or from the BPA easement itself. A 1940 transmission line easement granted by the Weyerhaeuser Timber Company to the BPA over the section, township and tract containing Mr. Bates's property also conveys a right of entry. In response, Mr. Bates claimed that he had an agreement with BPA to access the easement from a location other than the one traversed by Mr. Toole on June 22, 2004. The hearing was continued to allow Mr. Bates the opportunity to document this later understanding, but no such documentation has been produced. Accordingly, the record supports a finding that the June 22, 2004, photographs taken by Mr. Toole from the BPA easement and along the access route thereto were the product of a lawful entry onto Mr. Bates's property. The photos within exhibit 12 will be admitted to the record, except for the one photograph dated May 27, 2004, taken by code enforcement officer Holly Sawin for which no foundation has been provided.
3. The exhibit 12 photographs show a number of vehicles, mostly passenger cars, parked in high grass in an open meadow. Mr. Toole claims to have counted 20 such vehicles on his June 22, 2004, visit, and at least 14 vehicles are visible in the photographs. The vehicles photographed do not appear to be parked on impervious surfaces. On the other hand, the photographs display no accumulations of junk, debris or automobile parts. The photographs of the building cited in the notice and order show a largely improvised structure built out of scrap materials that is greater than 200 square feet in floor area.
4. The exhibit 12 photographs contain no overt evidence of a commercial or business use. The doors on the accessory structure are closed; there is no signage and no evidence of customers. Mr. Toole in his testimony was unable to describe any elements of a business use beyond the conditions depicted in the photographs. Mr. Bates's testimony concerning an occasional business use did not demonstrate that home occupation limits had been exceeded.

CONCLUSIONS:

1. While the general rule governing an appeal is that the appellant has the burden of proof, an exception to that rule exists in a code enforcement proceeding that may result in the imposition of a civil penalty. Hearing Examiner rule XI.B.8.b provides that “in a proceeding to consider an appeal or challenge to a King County agency’s imposition of a penalty or burden on a party or on his/her property, the agency shall be required to present a *prima facie* case based on competent evidence demonstrating that the legal standard for imposing such burden or penalty has been met.”
2. The code enforcement staff has not made out a *prima facie* case against Mr. Bates with respect to the citations for operation of an auto repair business, for an accumulation on the property of vehicle parts, or for an accumulation of rubbish, junk and debris on the premises. With respect to these citations the appeal must be granted.
3. Mr. Bates has not contested the citation for erecting a structure without a building permit, and the photographic evidence demonstrates that this structure exceeds 200 feet in floor area and is therefore not exempt from permitting requirements. The photographic evidence also supports the citations within the notice and order for inoperable vehicles on the property and parking on non-impervious surfaces. The notice and order will be upheld with respect to those citations.
4. There appears to be a disagreement between Mr. Bates and BPA concerning which of his structures are located within the power line easement. Our understanding is that such structures cannot remain within the power line easement without BPA consent and such consent is not often conferred. Resolution of this dispute is a matter for Mr. Bates and BPA to work out and not an issue in this appeal. However, if one compares the 2002 aerial photograph of the property with Mr. Bates’s recent survey, it is evident that at least some of the structures impinge upon the easement area.

DECISION:

The appeal is **GRANTED** with respect to the citation for conducting an auto repair business and with respect to alleged accumulations of auto parts, rubbish, junk and debris. The appeal is **DENIED** in all other respects.

ORDER:

1. By **March 31, 2005**, the Appellant shall obtain a building permit for the cited shed, remove all inoperable vehicles from the property, and park any remaining vehicles on an improved impervious surface. As an alternative to obtaining a building permit for the shed, the Appellant prior to **March 31, 2005**, may obtain a demolition permit and demolish and remove the cited structure.

2. No penalties shall be assessed against the Appellant or his property if he complies with the requirements of condition no. 1 above by the stated deadline. If the Appellant fails to meet the March 31, 2005, deadline, DDES may assess penalties retroactive to the date of this order.

ORDERED this 27th day of December, 2004.

Stafford L. Smith
King County Hearing Examiner

TRANSMITTED this 27th day of December, 2004, via certified mail to the following:

Everette Bates
30355 Kent-Black Diamond Rd.
Black Diamond WA 98042

TRANSMITTED this 27th day of December, 2004, to the following parties and interested persons of record:

Everette Bates
30355 Kent-Black Diamond Rd.
Black Diamond WA 98042

Suzanne Chan
DDES, Code Enf.
MS OAK-DE-0100

Elizabeth Deraitus
DDES/LUSD
Code Enf. Supvr.
MS OAK-DE-0100

Patricia Malone
DDES/LUSD
Code Enf. Section
MS OAK-DE-0100

Jim Toole
DDES, Code Enf.
MS OAK-DE-0100

NOTICE OF RIGHT TO APPEAL

Pursuant to Chapter 20.24, King County Code, the King County Council has directed that the Examiner make the final decision on behalf of the County regarding code enforcement appeals. The Examiner's decision shall be final and conclusive unless proceedings for review of the decision are properly commenced in Superior Court within twenty-one (21) days of issuance of the Examiner's decision. (The Land Use Petition Act defines the date on which a land use decision is issued by the Hearing Examiner as three days after a written decision is mailed.)

MINUTES OF THE DECEMBER 7, 2004, PUBLIC HEARING ON DEPARTMENT OF DEVELOPMENT AND ENVIRONMENTAL SERVICES FILE NO. E0001902.

Stafford L. Smith was the Hearing Examiner in this matter. Participating in the hearing were Jim Toole, representing the Department; and the Appellant, Everette Bates.

The following Exhibits were offered and entered into the record:

- Exhibit No. 1 DDES staff report for December 7, 2004
- Exhibit No. 2 Copy of Notice and Order issued October 12, 2004
- Exhibit No. 3 Copy of Notice and Statement of Appeal, received October 28, 2004
- Exhibit No. 4 Copies of Codes cited in the notice and order
- Exhibit No. 5 Past Code Enforcement case comments
- Exhibit No. 6 Real Estate Excise Tax Affidavit
- Exhibit No. 7 Copies of area, zoning and wetland delineation maps; and 1996, 2000 and 2002 aerial photos of subject property from GIS
- Exhibit No. 8 King County Department of Assessments property map
- Exhibit No. 9 2001 property survey of subject property – survey conducted by Crones & Associates on behalf of Everett Bates
- Exhibit No. 10 Fax (2 pgs + cover) from Bonneville Power Administration to DDES on March 7, 2001
- Exhibit No. 11 Bonneville Power Administration Transmission Line Easement pertaining to subject property, dated December 30, 1940
- Exhibit No. 12 June 22, 2004, site photographs (10 color copies)
- Exhibit No. 13 Photographs (10 color copies and 1 aerial depicting approximate location of other photos) of subject property with cover memo dated December 10, 2004